

ANDERSON & KARRENBERG
THOMAS R. KARRENBERG (#3726)
JARED SCOTT
50 West Broadway, Suite 700
Salt Lake City, UT 84101
Telephone: 801/534-1700
801/364-7697 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
DAVID W. MITCHELL
BRIAN O. O'MARA
STEVEN M. JODLOWSKI
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

BOIES SCHILLER FLEXNER LLP
SCOTT E. GANT
MELISSA F. ZAPPALA
1401 New York Ave., NW
Washington, DC 20005
Telephone: 202/237-2727
202/237-6131 (fax)
and
CARL GOLDFARB
401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: 954/356-0011
954/356-0022 (fax)

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

J THOMPSON, et al., Individually and on) No. 2:16-cv-01183
Behalf of All Others Similarly Situated,)
Plaintiffs,) CLASS ACTION
vs.) Honorable Judge Tena Campbell
1-800 CONTACTS, INC., et al.,) Honorable Magistrate Judge Dustin B. Pead
Defendants.)
PLAINTIFFS' DUCIVR 37-1 SHORT
FORM DISCOVERY MOTION TO
COMPEL RE-PRODUCTION OF
LENSDISCOUNTERS.COM'S FTC
MATERIALS IN THE POSSESSION OF
1-800 CONTACTS

Of the 20 non-parties, including at least 12 non-party online contact lens retailers, who produced documents in the FTC action, only 1 has filed an objection to the production of the very same information here. LensDiscounters.com objects solely on the basis that the request seeks sensitive business information even though that information would be protected under the Protective Order (“Order”) in this case and even though LensDiscounters has already produced that information to counsel for its largest competitor in the FTC action. ECF 180, 188.

“Confidentiality concerns . . . are . . . not a basis to withhold information appropriate for discovery.” *Sherwin-Williams Co. v. SUSE LLC*, No. 2:15-cv-00129, 2016 U.S. Dist. LEXIS 80264, at *6 (D. Utah Mar. 22, 2016). Maintaining the confidentiality of sensitive business information is “precisely the purpose and function of a Protective Order.” *Feature Films Servs., Inc.*, No. 91 C 459, 1992 U.S. Dist. LEXIS 270, at *3 (N.D. Ill. Jan. 13, 1992).

The Order in this case addresses LensDiscounters’ concerns. It allows a non-party to designate documents as either “CONFIDENTIAL” or “ATTORNEYS-EYES ONLY,” and restricts disclosure accordingly. ECF 180. It is as at least as restrictive as the protective order in the FTC action. *Compare* ECF 180 with ECF 188, Ex. B.

LensDiscounters frets that its information, which it generically describes as “trade secrets” and “secret technical processes,” will be disclosed to “*Thompson* class members or their attorneys.” ECF 188 at 3. But the Order does not permit disclosure to class members. ECF 180 at 7-9 (list of qualified recipients, which does not include class members). And documents designated as attorneys-eyes only cannot even be disclosed to in-house counsel for LensDiscounters’ competitors. *Id.* at 7-8. None of the outside counsel in this action are in the contact lens business. Given the strict terms of the governing Order, it is unclear how production of the requested information would create

an “unreasonable risk of injury” or “loss of a critical business advantage,” as LensDiscounters claims. ECF 188 at 2, 4; *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981) (stereotyped and conclusory statements are insufficient to satisfy an objector’s burden).

Courts have repeatedly recognized that protective orders such as the one entered here provide the necessary safeguards. *digEcor, Inc. v. e.Digital Corp.*, No. 2:06 cv 437 TS, 2008 U.S. Dist. LEXIS 69931, at *12 (D. Utah Sept. 16, 2008) (order restricting the disclosure of confidential information to attorneys who are not competitive decision-makers provides an appropriate safeguard).

LensDiscounters’ solitary objection has prevented plaintiffs from receiving *any* of the materials from the FTC action referencing confidential non-party information, which is a large swath of highly relevant information, because 1-800 Contacts is withholding all such material until all non-party objections are resolved. Accordingly, LensDiscounters’ objection is needlessly delaying plaintiffs’ prosecution of this action.

Protective orders are routinely used in courts throughout the country to safeguard the same type of information sought here. There is nothing unique about this case. LensDiscounters’ objection should be overruled.

DATED: October 22, 2018

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
DAVID W. MITCHELL (Admitted *Pro Hac Vice*)
BRIAN O. O’MARA
STEVEN M. JODLOWSKI (Admitted *Pro Hac Vice*)

s/ Steven M. Jodlowski
STEVEN M. JODLOWSKI

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Counsel for Plaintiffs and
Interim Lead Counsel for the Putative Class

DATED: October 22, 2018

BOIES SCHILLER FLEXNER LLP
CARL GOLDFARB (Admitted *Pro Hac Vice*)

s/ Carl Goldfarb

CARL GOLDFARB

(*Signed by Filing Attorney with permission.*)

401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, FL 33301
Telephone: 954/356-0011
954/356-0022 (fax)

BOIES SCHILLER FLEXNER LLP
SCOTT E. GANT (Admitted *Pro Hac Vice*)
MELISSA F. ZAPPALA (Admitted *Pro Hac Vice*)
1401 New York Ave., NW
Washington, DC 20005
Telephone: 202/237-2727
202/237-6131 (fax)

Counsel for Plaintiffs and
Interim Lead Counsel for the Putative Class

ANDERSON & KARRENBERG
THOMAS R. KARRENBERG (#3726)
JARED SCOTT
50 West Broadway, Suite 700
Salt Lake City, UT 84101
Telephone: 801/534-1700
801/364-7697 (fax)

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 22, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Steven M. Jodlowski
STEVEN M. JODLOWSKI

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: sjodlowski@rgrdlaw.com

Mailing Information for a Case 2:16-cv-01183-TC-DBP Thompson et al v. 1-800 Contacts, Inc. et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Jeffrey C. Bank**
jbank@wsgr.com,ageritano@wsgr.com,lalmeida@wsgr.com
- **Steven H. Bergman**
steven-bergman@rbmn.com,ladonna-welchel@rbmn.com,info@bergmanesq.com
- **Dorn Bishop**
db@markhamlawfirm.com,kim@dornbishoplaw.com
- **Alycia N. Broz**
anbroz@vorys.com
- **Kuntal Cholera**
kcholera@cov.com
- **Robert S. Clark**
rclark@parrbrown.com,calendar@parrbrown.com,afoutz@parrbrown.com
- **Justin A. Cohen**
jcohen@wsgr.com
- **Robert M. Corp**
rcorp@wsgr.com,ageritano@wsgr.com
- **Jerry R. DeSiderato**
jdesiderato@dilworthlaw.com,vmckeage@dilworthlaw.com
- **Tyler Anne Dever**
tyler-dever@rbmn.com,ladonna-welchel@rbmn.com
- **Jason Eliaser**
je@markhamlawfirm.com

- **Stephen Fishbein**
sfishbein@shearman.com
- **Scott E. Gant**
sgant@bsflp.com
- **Carl E. Goldfarb**
cgoldfarb@bsflp.com,krenae@bsflp.com,mcalvin@bsflp.com,hgreen@bsflp.com
- **Richard M. Golomb**
rgolomb@golombhonik.com,emalloy@golombhonik.COM
- **Kenneth J. Grunfeld**
kgrunfeld@golombhonik.com,emalloy@golombhonik.COM
- **Robert P. Harrington**
rharrington@rqn.com,jevans@rqn.com,docket@rqn.com
- **Brent O. Hatch**
bhatch@hjdlaw.com,bre nthatch@gmail.com,administrator@hjdlaw.com
- **Mike Houchin**
mike@consumersadvocates.com
- **Steven M. Jodlowski**
sjodlowski@rgrdlaw.com,akelly@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Patrick E. Johnson**
pjohnson@cohnekinghorn.com,jdannenmueller@cohnekinghorn.com,msine@cohnekinghorn.com
- **Theodore E. Kanell**
t kanell@pckutah.com,mstones@pckutah.com
- **Ashley D. Kaplan**
ashley.kaplan@mto.com
- **Thomas R Karrenberg**
tkarrenberg@aklawfirm.com,rdodge@aklawfirm.com
- **Jason M. Kerr**
jasonkerr@ppktrial.com,johnsnow@ppktrial.com,elizabeth.phelps-robbins@ppktrial.com,steven.garff@ppktrial.com,angelajohnson@ppktrial.com

- **Andrew Lazerow**
alazerow@cov.com
- **William A. Markham**
wm@markhamlawfirm.com,la@markhamlawfirm.com,aa@markhamlawfirm.com
- **Ronald Marron**
ron.marron@gmail.com,ecf@consumersadvocates.com
- **David W. Mitchell**
davidm@rgrdlaw.com,ckopko@rgrdlaw.com
- **Paul T. Moxley**
pmoxley@cohnekinghorn.com,msine@cohnekinghorn.com,mcerutti@cohnekinghorn.com
- **Sara M. Nielson**
snielson@parrbrown.com,acoats@parrbrown.com,calendar@parrbrown.com
- **Chul Pak**
cpak@wsgr.com,ageritano@wsgr.com
- **Rebecca A. Peterson**
rapeterson@locklaw.com,bgilles@locklaw.com
- **Justin P. Raphael**
justin.rafael@mto.com,mark.roberts@mto.com
- **Amanda McMurray Roe**
amroe@vorys.com
- **Kenneth J. Rubin**
kjrubin@vorys.com
- **Jared D. Scott**
jscott@aklawfirm.com,krubino@aklawfirm.com
- **Robert K. Shelquist**
rkshelquist@locklaw.com,kjleroy@locklaw.com,bgilles@locklaw.com
- **Ryan A. Shores**
ryan.shores@shearman.com,gloria.jenkins@shearman.com

- **Rohit Kumar Singla**
rohit.singla@mto.com,dolores.reyes@mto.com
- **Timothy J. Slattery**
timothy.slattery@shearman.com
- **Heather M. Sneddon**
hsneddon@aklawfirm.com,krubino@aklawfirm.com
- **David J. Stanoch**
dstanoch@golombhonik.com,emalloy@golombhonik.com
- **Samuel C. Straight**
sstraight@rqn.com,bsears@rqn.com,docket@rqn.com
- **Lara A. Swensen**
lswensen@hjdlaw.com,administrator@hjdlaw.com
- **Joshua D. Wolson**
jwolson@dilworthlaw.com,jabed@dilworthlaw.com
- **Melissa Felder Zappala**
mzappala@bsfllp.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Todd **M. Stenerson**
SHEARMAN & STERLING LLP
401 9TH ST NW STE 800
WASHINGTON, DC 20004

Comma delimited list of email addresses that may be used for copying and pasting into your own email program:

jbanks@wsgr.com,ageritano@wsgr.com,lalmeida@wsgr.com,steven-bergman@rbmn.com,
ladonna-welchel@rbmn.com,info@bergmanesq.com,db@markhamlawfirm.com,kim@dornbishoplaw.com,
anbroz@vorys.com,kcholera@cov.com,rclark@parrbrown.com,calendar@parrbrown.com,
afoutz@parrbrown.com,jcohen@wsgr.com,rcorp@wsgr.com,jdesiderato@dilworthlaw.com,
vmckeage@dilworthlaw.com,tyler-dever@rbmn.com,je@markhamlawfirm.com,sfishbein@shearman.com,
sgant@bsfllp.com,cgoldfarb@bsfllp.com,krenae@bsfllp.com,mcalvin@bsfllp.com,

hgreen@bsfllp.com, rgolomb@golombhonik.com, emalloy@golombhonik.COm, kgrunfeld@golombhonik.com, rharrington@rqn.com, jevans@rqn.com, docket@rqn.com, bhatch@hjdlaw.com, brenthatch@gmail.com, administrator@hjdlaw.com, mike@consumersadvocates.com, sjodlowski@rgrdlaw.com, akelly@rgrdlaw.com, e_file_sd@rgrdlaw.com, pjohnson@cohnekinghorn.com, jdannenmueller@cohnekinghorn.com, msine@cohnekinghorn.com, tkanell@pckutah.com, mstones@pckutah.com, ashley.kaplan@mto.com, tkarrenberg@aklawfirm.com, rdodge@aklawfirm.com, jasonkerr@ppktrial.com, johnsnow@ppktrial.com, elizabeth.phelps-robbins@ppktrial.com, steven.garff@ppktrial.com, angelajohnson@ppktrial.com, alazerow@cov.com, wm@markhamlawfirm.com, la@markhamlawfirm.com, aa@markhamlawfirm.com, ron.marron@gmail.com, ecf@consumersadvocates.com, davidm@rgrdlaw.com, ckopko@rgrdlaw.com, pmoxley@cohnekinghorn.com, mcerutti@cohnekinghorn.com, snielson@parrbrown.com, acoats@parrbrown.com, cpak@wsgr.com, rapeterson@locklaw.com, bgilles@locklaw.com, justin.rafael@mto.com, mark.roberts@mto.com, amroe@vorys.com, kjrubin@vorys.com, jscott@aklawfirm.com, krubino@aklawfirm.com, rkshelquist@locklaw.com, kjleroy@locklaw.com, ryan.shores@shearman.com, gloria.jenkins@shearman.com, rohit.singla@mto.com, dolores.reyes@mto.com, timothy.slattery@shearman.com, hsneddon@aklawfirm.com, dstanoch@golombhonik.com, emalloy@golombhonik.com, ssstraight@rqn.com, bsears@rqn.com, lswensen@hjdlaw.com, jwolson@dilworthlaw.com, jabed@dilworthlaw.com, mzappala@bsfllp.com

(Too many email addresses to create a "mailto" link - more than 1500 characters.)